

REMARKS

1. Applicant thanks the Examiner for the Examiner's comments, which have greatly assisted Applicant in responding.

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Applicant thanks the Examiner and her SPE for their courtesy and assistance during an interview which was held on 10 April 2007. During the interview, Applicant discussed the cited reference, Atkins, and explained the manner in which the invention is distinguished. Applicant pointed out support for the automatic sweep process of the claimed invention that is not deemed to be disclosed or fairly suggested in Atkins, to which SPE Chilcot agreed would seem to overcome rejections to the Atkins reference, if the nature of the automatic sweep process and possibly parts of Claim 9 were brought into Claim 1. SPE Chilcot pointed out that Europe and Australia have a one-account product type of which Applicant should be aware.

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Applicant has taken every effort to represent the Examiner's statements fairly and accurately. Applicant also notes that the amendments made herein do not amount to a concession that the claims as originally submitted were not distinguished from the prior art or that the amendments herein amount to a surrender of any claim scope. Rather the amendments herein are by way of clarification only. By making these amendments, the Applicant does not in any way surrender any claimed scope or equivalence of the claim elements to which the Applicant might otherwise be entitled.

2. Information Disclosure Statement (IDS)

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The IDS filed on April 16, 2002 was found to be non-compliant with 37 CFR 1.98(a)(2).

Applicant has submitted herewith an IDS with a legible copy of each cited foreign patent document, each non-patent literature publication or that portion which caused it to be listed, and all other information or that portion which caused it to be listed.

Applicant is of the opinion that the information referred to therein will be considered.

3. Abstract

5 The Abstract stands objected to for a number of cited reasons.

Applicant submits herewith a substitute Abstract that is compliant with the guidelines for the preparation of patent abstracts, MPEP 608.01(b) Abstract of the Disclosure [R-3]. No new matter has been added.

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4. Claim Objections

Claim 4 stands objected to because the word --is-- is missing and correction was required.

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Applicant has made the correction. Applicant respectfully requests that the Examiner withdraw the objection.

5. Claim Rejections – 35 U.S.C. §112

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(a) Claims 9 and 21 stand rejected under 35 U.S.C. §112, first paragraph as failing to comply with the enablement requirement.

25 Specifically, the phrase, "comprising any or any combination of" in lines 1-2 of Claims 9 and 21 is deemed to render the claims indefinite as one of ordinary skill in the art would be unable to ascertain the metes and bounds of the Claims.

Applicant respectfully traverses.

First, Applicant respectfully points out that the Examiner is confused, because while the Examiner rejected the Claims under 35 U.S.C. §112, first paragraph, the reason was that it failed to satisfy one of the requirements of 35 U.S.C. §112, second paragraph.

5 Second, the Examiner's attention is directed to MPEP 2173.02 Clarity and Precision [R-3], which states (emphasis added):

If the language of the claim is **such that a person of ordinary skill in the art could not interpret the metes and bounds of the claim so as to understand how to avoid infringement**, a rejection of the claim under 35 U.S.C. 112, second paragraph, would be appropriate. See *Morton Int'l, Inc. v. Cardinal Chem. Co.*, 5 F.3d 1464, 1470, 28 USPQ2d 1190, 1195 (Fed. Cir. 1993). However, if the language used by applicant satisfies the statutory requirements of 35 U.S.C. 112, second paragraph, but the examiner merely wants the applicant to improve the clarity or precision of the language used, the claim must not be rejected under 35 U.S.C. 112, second paragraph, rather, the examiner should suggest improved language to the applicant.

20 Applicant is of the opinion that one of ordinary skill in the art can interpret the phrase "comprising any of or any combination of" so as to understand how to avoid infringement. That is, one of ordinary skill in the art can understand that any of the limitations could infringe or any combination of the limitations could infringe.

25 Nevertheless, in the spirit of compact prosecution, Applicant has deleted the phrase "or any combination of" from each of the Claims. In view of the amendment to the Claims, Applicant is of the opinion that the rejection is overcome. Applicant respectfully requests that the Examiner withdraw the rejection under 35 U.S.C. §112, first paragraph.

(b) Claims 5, 10, 12, 17, 22, and 24 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

5 Applicant respectfully traverses.

Nevertheless, in the spirit of compact prosecution, Applicant has amended the Claims to eliminate the objectionable phrases. In view of the amendment to the Claims, Applicant is of the opinion that the rejection is overcome. Applicant respectfully requests that the
10 Examiner withdraw the rejection under 35 U.S.C. §112, second paragraph.

6. **Claim Rejections – 35 U.S.C. §102**

Claims 1, 4-7, 10-13, 16-19, and 21-24 stand rejected as being anticipated by U.S. Pat.
15 No. 5,852,811 to Atkins.

Applicant respectfully traverses.

The claimed invention is concerned with providing a bundled home asset management
20 package to customers. Further, the claimed invention provides availability of maximum
equity in a borrower's subject property at all times by performing an **automatic process**
that sweeps principal paydowns from the first mortgage into home equity products, as
well as by performing automatic line increases based upon the appreciation of the
subject property value. (See Specification on page 1, lines 7-9 and on page 6, lines 3-
25 8.)

As well, the claimed invention, *inter alia* teaches (See Specification, page 19, line 17
through page 21, line 21):

- Identify home asset management account loans on the preexisting mortgage
30 system;

- Home asset management account loans and all necessary data fields per mortgage account are pulled into extract file;
- Identify home asset management account loans on the preexisting equity system;
- Home asset management account loans and all necessary data fields per equity account are pulled into extract file;
- All home asset management account loans from the preexisting mortgage system and the preexisting equity system extract files are merged/compared and stored in an intersect database;
- Home asset management equity accounts are filtered or tested for the sweep flag equal to No in the preexisting equity system;
- Home asset management equity accounts with No set in the sweep flag field are excluded from the sweep process at this point and populated with a sweep flag set to no reason code;
- Home asset management mortgage accounts are filtered or tested for bankruptcy status;
- Home asset management mortgage accounts that are in bankruptcy status for the first are excluded from the sweep process at this point and are populated with a bankruptcy on the first mortgage reason code;
- Home asset management mortgage accounts are filtered or tested for foreclosure status;
- Home asset management mortgage accounts that are in foreclosure for the first are excluded from the sweep process at this point and are populated with a foreclosure on the first mortgage reason code;
- Home asset management mortgage accounts are filtered or tested for current status on first mortgage. Current status on the first mortgage is defined as follows: if the current month is beyond the due month then the loan is not current. Payment must be received on or before end of the month of the due date month to consider the account current;
- Home asset management mortgage accounts that are not current on the first mortgage are excluded from the sweep process at this point and populated with a not current on the first mortgage reason code;

- Home asset management equity accounts are filtered or tested for current status on the equity LOC;
- Home asset management equity accounts that are not current for the equity LOC are excluded from the sweep process at this point and are populated with a not current on the equity LOC reason code;
- 5 • The first mortgage principal pay down amount is identified and rounded down to the nearest dollar for all merged and matched accounts that have passed all filters and tests; and
- The first mortgage principal pay down amount is swept and the available equity LOC
- 10 amount on the preexisting equity system is increased.

The Atkins reference is concerned with a method for managing financial accounts by a preferred allocation of funds among accounts. It includes a prioritization function that suggests to the client a portfolio of asset and liability accounts that may be credited and debited to form investments and borrowings to best realize his financial objectives over a defined time horizon. Further, a central structural element of the financial account is a liability account secured by the client's home and one or more asset accounts. Client funds that would normally be used to amortize the mortgage may be alternatively used according to a prioritized allocation of funds to asset accounts and liability accounts.

15 (See Abstract)

20 At most, the Atkins reference discloses a HOME™ Account for the purpose of not retiring an existing mortgage, as follows (Col. 4, lines 35 through 56, emphasis added):

25 One particularly advantageous derivative product enables a present homeowner to enjoy the benefits of the present invention without having to immediately retire an existing mortgage and obtain entirely new refinancing on his home. In this instance, the homeowner continues to make periodic mortgage payments to the original mortgage holder. These payments can be made to the original mortgage holder either directly by the homeowner or through the financial institution that offers the

30 HOME™ Account. In either case, as periodic payments are made to the original

mortgage holder, a credit line from the HOME™ Account is debited and an asset account is credited with an amount equal to at least a part of the amortization portion of each periodic payment to the original mortgage holder. As a result, the sum of the principal remaining on the original mortgage and the credit extended through the
5 HOME™ Account may be as much or more than the principal due on the original mortgage at the time the HOME™ Account credit line was first debited. Thus, this HOME™ Account derivative product may effectively reduce, eliminate or reverse the amortization feature of the original mortgage.

10 It is evident that such mechanism is not equivalent to nor fairly suggests the claimed invention's automatic sweep process as discussed hereinabove. The claimed invention does not include any investment asset account as taught in the Atkins reference.

15 Nevertheless, Applicant has amended independent Claims 1 and 13 to further clarify such automatic sweep process.

The Examiner's attention is drawn to MPEP 2131 Anticipation - Application of 35 U.S.C. 102(a), (b), and (e), which states that to anticipate a claim, the reference must teach every element of the claim. Applicant asserts that in view of the discussion
20 hereinabove, the Atkins reference does not teach every element of Claims 1 and 13, and hence the rejection under 35 U.S.C. 102(b) of Claim 1 and 13 and the respective dependent Claims is deemed overcome. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection under 35 U.S.C. 102(b).

25 7. **Claim Rejections – 35 U.S.C. §103**

Claims 2, 3, 8, 14, 15, and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Atkins, alone.

30 Applicant respectfully traverses.

The rejection to Claims 2, 3, 8, 14, 15, and 20 under 35 U.S.C. 103(a) is deemed moot in view of Applicant's comments concerning Claims 1 and 13, above. Claims 2, 3, 8, 14, 15, and 20 are dependent upon Claims 1 and 13, respectively, which are deemed to be in allowable condition. Therefore, Applicant respectfully requests that the Examiner

5 withdraw the rejection under 35 U.S.C. §103(a).

8. It should be appreciated that Applicant has elected to amend the Claims solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals, 65 Fed. Reg. 54603 (9/8/00). In making such

10 amendment, Applicant has not and does not in any way narrow the scope of protection to which Applicant considers the invention herein to be entitled. Rather, Applicant reserves Applicant's right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

CONCLUSION

Based on the foregoing, Applicant considers the present invention to be distinguished
5 from the art of record. Accordingly, Applicant earnestly solicits the Examiner's withdrawal of the objections and rejections raised in the above referenced Office Action, such that a Notice of Allowance is forwarded to Applicant, and the present application is therefore allowed to issue as a United States patent. Should the Examiner have any questions, she is encouraged to call to Applicant's attorney, at (650) 474-8400.

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Respectfully Submitted,



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